

MUSICK, PEELER & GARRETT LLP

ATTORNEYS AT LAW
One Wilshire Boulevard, Suite 2000
Los Angeles, California 90017-3383
TELEPHONE 213-629-7612
FACSIMILE (213) 624-1376

Susan J. Field (State Bar No. 086200)
s.field@mpglaw.com
Richard S. Conn (State Bar No. 065513)
r.conn@mpglaw.com
Barbora Pulmanova (State Bar No. 234028)
b.pulmanova@mpglaw.com

Attorneys for NATIONAL INDEMNITY COMPANY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

STEVE POIZNER, INSURANCE
COMMISSIONER OF THE STATE
OF CALIFORNIA, in his capacity as
Liquidator of Frontier Pacific Insurance
Company,

Plaintiff,

vs.

NATIONAL INDEMNITY
COMPANY, a Nebraska corporation;
and DOES 1 through 10,

Defendant.

Case No. 08 CV 772 L (POR)

Assigned to the Hon. M. James Lorenz
Courtroom 14

Complaint Filed: March 17, 2008

**NOTICE OF MOTION AND
MOTION OF DEFENDANT
NATIONAL INDEMNITY
COMPANY TO STAY
PROSECUTION OF ACTION
PENDING ARBITRATION OF
CLAIMS**

**[SUPPORTING MEMORANDUM
OF POINTS AND AUTHORITIES,
DECLARATION OF RICHARD S.
CONN; DECLARATION OF
JOSEPH CASACCIO; AND
[PROPOSED] ORDER FILED
CONCURRENTLY HEREWITH]**

**DATE: August 18, 2008
TIME: 10:30 a.m.
COURTROOM: 14**

TO THE INSURANCE COMMISSIONER OF THE STATE OF CALIFORNIA
AND TO ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 18, 2008, at 10:30 a.m. or as

1 soon thereafter as the matter may be heard, in Courtroom 14 of the above-entitled
2 Court, located at 880 Front Street, San Diego, California 92101, Defendant National
3 Insurance Company ("NICO"), will and hereby does move for an order staying the
4 prosecution of this acting pending arbitration of claims. This motion is made
5 pursuant to the Federal Arbitration Act, 9 U.S.C. §§ 1-9, on the ground that the
6 reinsurance agreements at issue in this action provide for binding arbitration of any
7 disputes thereunder.

8 This motion is based on the accompanying Memorandum of Points and
9 Authorities, the Declaration of Richard S. Conn, the Declaration of Joseph Casaccio,
10 and on the [Proposed] Order Staying Prosecution of Action Pending Arbitration of
11 Claims lodged herewith, on the pleadings and papers on file herein, and on such
12 further matters as may be presented in a reply memorandum at the hearing on this
13 motion.

14
15 DATED: June 27, 2008

MUSICK, PEELER & GARRETT LLP

16
17 By: s/Richard S. Conn
18 Richard S. Conn
19 Attorneys for NATIONAL INDEMNITY
20 COMPANY
21
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within entitled action; my business address is One Wilshire Boulevard, Suite 2000, Los Angeles, California 90017-3383.

On June 27, 2008, I served the foregoing document(s) described as **NOTICE OF MOTION AND MOTION OF DEFENDANT NATIONAL INDEMNITY COMPANY TO STAY PROSECUTION OF ACTION PENDING ARBITRATION OF CLAIMS** on the interested parties in this action by placing a copy thereof enclosed in a sealed envelope addressed as follows:

See Attached List

☒ **BY MAIL.** I caused such envelope with postage thereon fully prepaid to be placed in the U.S. Mail at Los Angeles, California. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ **BY ELECTRONIC MAIL OR ELECTRONIC TRANSMISSION.** Based upon the Court's order for mandatory e-filing, I provided the documents listed above electronically to the Court's website and thereon to those parties on the Service List maintained by that website by submitting an electronic version of the documents to the Court's website. The documents are deemed filed and served on the date that they were uploaded to the Court's website.

☐ **BY FACSIMILE TRANSMISSION.** I caused such document to be transmitted to the addressee(s) facsimile number(s) noted herein. The facsimile machine used complies with Rule 2003 and no error was reported by the machine. Pursuant to Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

Executed on June 27, 2008, at Los Angeles, California.

☐ **(State)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☒ **(Federal)** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

s/Slevcove
Kathleen Slevcove

SERVICE LIST

EDMUND G. BROWN, JR. Attorneys for Plaintiff Steve Poizner,
Attorney General of the State of Insurance Commissioner of the State of
California in his capacity as Liquidator
of Frontier Pacific Insurance Company
W. DEAN FREEMAN
Supervising Deputy Attorney General
DIANE SPENCER SHAW
LISA W. CHAO
Deputy Attorneys General
300 South Spring Street, Suite 1702
Los Angeles, California 90013
Telephone: (213) 897-2486
Fax: (213) 897-5775
LAZLO KOMJATHY, JR. Attorneys for Plaintiff Steve Poizner,
Department of Insurance Insurance Commissioner of the State of
45 Fremont Street, 24th Floor California in his capacity as Liquidator
San Francisco, California 94105 of Frontier Pacific Insurance Company
Telephone: (415) 538-4413

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within entitled action; my business address is One Wilshire Boulevard, Suite 2000, Los Angeles, California 90017-3383.

On June 27, 2008, I served the foregoing document(s) described as **MEMORANDUM OF DEFENDANT NATIONAL INDEMNITY CO. IN AID OF EARLY NEUTRAL EVALUATION CONFERENCE** on the interested parties in this action by placing a copy thereof enclosed in a sealed envelope addressed as follows:

See Attached List

☒ **BY MAIL.** I caused such envelope with postage thereon fully prepaid to be placed in the U.S. Mail at Los Angeles, California. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ **BY ELECTRONIC MAIL OR ELECTRONIC TRANSMISSION.** Based upon the Court's order for mandatory e-filing, I provided the documents listed above electronically to the Court's website and thereon to those parties on the Service List maintained by that website by submitting an electronic version of the documents to the Court's website. The documents are deemed filed and served on the date that they were uploaded to the Court's website.

☐ **BY FACSIMILE TRANSMISSION.** I caused such document to be transmitted to the addressee(s) facsimile number(s) noted herein. The facsimile machine used complies with Rule 2003 and no error was reported by the machine. Pursuant to Rule 2008(e), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

Executed on June 27, 2008, at Los Angeles, California.

☐ (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☒ (Federal) I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

s/Kathleen Slevcove
Kathleen Slevcove

SERVICE LIST

EDMUND G. BROWN, JR. Attorneys for Plaintiff Steve Poizner,
Attorney General of the State of Insurance Commissioner of the State of
California California in his capacity as Liquidator
of Frontier Pacific Insurance Company
W. DEAN FREEMAN
Supervising Deputy Attorney General
DIANE SPENCER SHAW
LISA W. CHAO
Deputy Attorneys General
300 South Spring Street, Suite 1702
Los Angeles, California 90013
Telephone: (213) 897-2486
Fax: (213) 897-5775
LAZLO KOMJATHY, JR. Attorneys for Plaintiff Steve Poizner,
Department of Insurance Insurance Commissioner of the State of
45 Fremont Street, 24th Floor California in his capacity as Liquidator
San Francisco, California 94105 of Frontier Pacific Insurance Company
Telephone: (415) 538-4413